

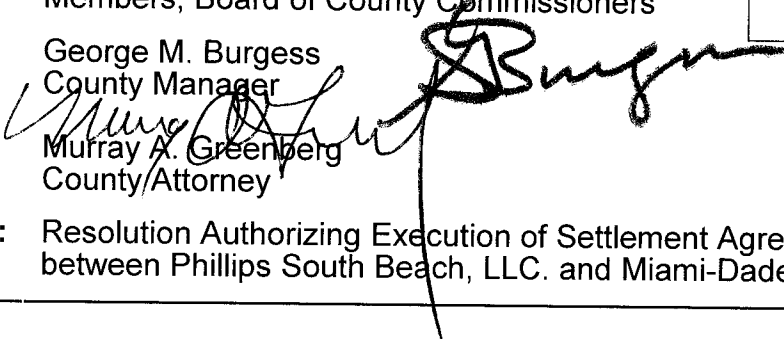
Memorandum



Date: March 6, 2007

To: Honorable Chairman Bruno A. Barreiro, and
Members, Board of County Commissioners

Agenda Item No. 12(A)(6)

From: George M. Burgess
County Manager

Murray A. Greenberg
County Attorney

Subject: Resolution Authorizing Execution of Settlement Agreement, Waiver and Release
between Phillips South Beach, LLC. and Miami-Dade County.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution authorizing the execution of a Settlement Agreement, Waiver, and Release between Phillips South Beach, LLC ("Phillips") and Miami-Dade County. This resolution relates to water and sewer connection fees established in Miami-Dade County Ordinance No. 89-95. Phillips has agreed to pay the County \$87,500 in full satisfaction of the County's claim for payment. This settlement does not include the City of Miami Beach's responsibilities described below

BACKGROUND

Miami-Dade County Ordinance No. 89-95 requires that all new buildings within the jurisdiction of a volume customer that are deemed to impact water and/or sewer facilities pay a connection charge to the Miami-Dade Water and Sewer Department (MDWASD). Volume customers are those municipalities that purchase water and/or sewer service from the County and then directly provide these services to retail customers within their jurisdiction. The City of Miami Beach is a volume customer of MDWASD's. Under Ordinance No. 89-95, the volume customer is prohibited from rendering water service, sewer service, or both until it has either collected the County's connection charge or it is presented with a receipt showing the County has received the money. In 2005, an audit conducted by the County's Audit and Management Services revealed that for a number of buildings built between 1989 and 2005 the City of Miami Beach had failed to either collect the connection charges or verify that the charges had been collected by the County. Contrary to the mandates of Ordinance No. 89-95, the City of Miami Beach provided water and/or sewer services to all those buildings.

MDWASD staff has since sought payment from all the buildings in the City of Miami Beach that were identified as not having paid the proper connection charges between 1989 and 2005. Details of the collection efforts, as well as a listing of buildings owing

over \$100,000, are found in the County Manager's Memorandum attached to Resolution R-115-07. Among the buildings owing money to the County is the Shore Club, which owes approximately \$118,585. Phillips, the owner of the Shore Club, has since offered to resolve this matter by paying the County \$87,500.

Phillips has asserted various defenses to the County's claim; these defenses may prevent the County from recovering the claimed amounts. This settlement is fair and reasonable given the strength of the Entities' defenses, the risks of litigation and the costs of trying this case.

This proposed settlement with Phillips does not relieve the City of Miami Beach from its responsibility to either collect or pay the remainder of the delinquent fee. Staff intends to meet and negotiate with the City of Miami-Beach regarding the balance of the unpaid fees once the total recovery balance from all projects, including the Shore Club, is known.

Based upon the complex legal issues, the risks of litigation and the potential for additional revenues from a final settlement with the City of Miami Beach your approval of the attached resolution and Settlement Agreement, Waiver and Release is respectfully requested.



Roger M.. Carlton
Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: March 6, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 12(A)(6)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☒ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(6)

3-6-07

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A
SETTLEMENT AGREEMENT, WAIVER AND
RELEASE BETWEEN PHILLIPS GROUP LLC AND
MIAMI-DADE COUNTY RELATING TO THE
PAYMENT OF WATER AND SEWER CONNECTION
CHARGES PURSUANT TO MIAMI-DADE COUNTY
ORDINANCE 89-95

WHEREAS, this Board desires to accomplish the purposes outlined in the
accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board
hereby approves the execution of a Settlement Agreement, Waiver and Release between
Phillips Group LLC relating to the payment of water and sewer connection charges
pursuant to Miami-Dade County Ordinance 89-85, in substantially the form attached
hereto and made a part hereto; and authorizes the Mayor or his designee to execute same
for and on behalf of Miami-Dade County.

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The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairman thereupon declared the resolution duly passed and adopted this 6th
day of March, 2007. This resolution shall become effective ten (10) days after the date of
its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon
an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray

SETTLEMENT AGREEMENT, WAIVER AND RELEASE

BY AND BETWEEN

MIAMI-DADE COUNTY

AND

PHILLIPS GROUP LLC

This Settlement Agreement is entered into on this _____ day of _____, 2007, by and between Miami-Dade County (the "County") and Phillips Group LLC (hereinafter collectively referred to as "Phillips");

WHEREAS, Developer is owner of a property located at 1901 Collins Ave., Miami Beach Florida, 33139 ("the Property"), and which property is more commonly known as the Shore Club; and

WHEREAS, the County has alleged that development of the Property required payment of water and sewer connection charges to the County pursuant to Miami-Dade County Ordinance 89-95; and

WHEREAS, the Miami-Dade Water and Sewer Department ("WASA") has requested payment of water and sewer connection charges for the Property; and

WHEREAS, the County has alleged that these fees remain outstanding in the amount of \$118,583.60; and

WHEREAS, Phillips disputes and denies that any water and sewer connection charges are due for the Property as of the date of this Agreement; and

WHEREAS, the County and Phillips desire to completely resolve and settle all issues related to the allegedly outstanding water and sewer connection charges for the Property;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, Phillips and the County agree as follows:

1. Pursuant to the execution of this Agreement, the Developer shall pay to the County the amount of \$87,500. This amount shall be due upon execution of this agreement by all parties.

2. Phillips and the County waive and release any and all claims at law or equity each party has or may accrue against the other, its agents, employees, and officials, arising, on or before the effective date of this agreement, out of the allegedly due water and sewer connection charges for the Property. This waiver and release includes any and all claims for the water and sewer connection charges the County has or may have against the owners of condominium units on the Property. Notwithstanding the preceding, nothing contained herein shall limit the ability of the County to enforce any provision of the Code of Miami-Dade County against Phillips with respect to any matters, excluding those matters related to the water and sewer connection charges.

3. Neither Phillips, collectively or individually, nor the County admit any liability or wrongdoing.

4. This agreement is complete and contains the full understanding of Phillips and the County. This agreement may not be modified without the express written consent of Phillips and the County. This agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may exist between Phillips and the County relating to water and sewer connection charges allegedly due for the Property.

5. The execution of this agreement is duly authorized and is binding on the parties hereto and their successors in interest.

6. This agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

7. This agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first above written.

Witnesses:

PHILLIPS GROUP LLC

By: _____

Print Name: _____

Title: _____

Attest:

MIAMI-DADE COUNTY

Harvey Ruvin, Clerk

By: _____
Deputy Clerk

By: _____
Mayor

Approved as to form and Legal sufficiency:

Assistant County Attorney